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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,487	06/06/2001	Tracy L. Francis	5127	7168
25280	7590	07/11/2008	EXAMINER	
Legal Department (M-495) P.O. Box 1926 Spartanburg, SC 29304			CASLER, TRACI	
			ART UNIT	PAPER NUMBER
			3629	
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			07/11/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/875,487	<b>Applicant(s)</b> FRANCIS ET AL.
	<b>Examiner</b> Traci L. Casler	<b>Art Unit</b> 3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 14 April 2008.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 15, 16, 18-22 and 25-27 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 15, 16, 18-22 and 25-27 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some \*    c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)
 

Paper No(s)/Mail Date \_\_\_\_\_.
- 4)  Interview Summary (PTO-413)
 

Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

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### **DETAILED ACTION**

This action is in response to papers filed on April 14, 2008.

Claims 17, 23 and 28-33 have been cancelled.

Claims 15, 22 and 27 have been amended.

Claims 15, 16, 18-22 and 25-27 are pending.

Claims 15, 16, 18-22 and 25-27 are rejected.

#### ***Claim Objections***

1. Claims 26, 31-33 are objected to because of the following informalities:

The objected claims for dependent classes switching statutory subject matter. A dependent claim that is in a different statutory class than its independent claim is not automatically improper. To test if any claim is a proper dependent claim, use the "infringement test" in MPEP 608.01(n), Section III. If a claim is a **proper dependent** claim, it **cannot conceivably be infringed by anything that would not also infringe the claim it references**. Another way to think of it is - if you can infringe the dependent claim without infringing the independent claim, then the dependent claim is an improper dependent claim because it does not require all the limitations of the independent claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 fails to include a transitional

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phrase between the preamble and the claim language, as such there is no indication as to where the preamble ends and the claim limitations begin. Without a preamble it is indefinite as to the scope of the invention being claimed. See 2111.03 (R-3) Transitional Phrases.

3. Claim 22 recites the limitation "the" in fifth line of the amended portion of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 15-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication 2002/0002482 A1; Thomas. Method and Apparatus for Performing Surveys Electronically over a Network; hereinafter referred to as

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Thomas; in view of US Patent Publication 20020004749 A1 Froseth, et al;  
Customized Food Selection Ordering and Distribution System and Method.

7. As to claims **22 and 27** A method of evaluating the potential market acceptance of one or more floor covering designs with the assistance of pre-qualified associates, the method comprising:

providing an interactive web site for the communication and receipt of data via the Internet; electronically communicating to a multiplicity of pre-qualified associates web documents illustrating one or more floor covering designs in combination with a standardized rating scale Thomas teaches a method for providing an electronic form survey(polls, and opinions) to a plurality of register participants(PG. 1 13). Thomas further teaches the survey including graphical images video clips etc.

8. Comprising a plurality of selectable responses Indicating varying levels of likelihood of use of said one or more floor covering designs Thomas survey format allows several forms i.e., true/false, good better best, (Pg. 5 ¶ 59).

9. Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order wherein at least a portion of said web documents further include links from the web documents as initially communicated to associates to an interactive electronic shopping cart accessible by said associates for ordering physical samples and/or products incorporating designs as displayed on the web documents, such that the shopping cart is accessible directly from said web documents independent of selecting any given response menu item; Thomas fails to teach a shopping cart accessible from the

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initial communication that allows the user to place and order without taking a survey. Froseth teaches a customer taking both a food preference survey (if they prefer it they will likely use it) (Pg. 6 ¶ 81) and scoring or rating a product on how well it was like (Pg. 26 ¶ 270). Froseth additionally allows the user to bi-pass the surveys and order (Pg. 11-12 ¶ 131). It would have been obvious to one skilled in the art at the time of invention to combine Froseth with Thomas so as to allow a user to directly purchase an already known or preferred product and not require or need to seek advice or recommendation.

10. Electronically receiving from at least a portion of said associates responses indicating the likelihood of use of said one or more floor covering designs and/or orders placed; and Thomas teaches electronically receiving at least a portion of the likelihood of use. (Pg. 4 ¶ 53)

11. Tabulating and archiving the selected responses received from said associates, wherein the electronically communicating and electronically receiving steps are conducted through said interactive web site. Thomas teaches tabulating and storing results (Pg. 4 ¶ 52).

12. **Thomas/Froseth fail to teach the reviewer as architects and designers.** Carlin teaches a market base of interior designers and architects (C. 18 I. 19-20.). One of ordinary skill in the art of Market research and sales would have found it obvious to try the interior design and architect professionals with research/sales system of Thomas/Froseth since there are a fine number of identified, predictable potential solutions (types of surveys) to the recognized

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need (customer satisfaction) and one of ordinary skill in the art could have pursued the known potential solutions with reasonable expectation of success.

**13. Thomas/Froseth fail to teach the product being surveyed researched as surface covering, wall covering or floor covering designs before they are release for sale.**

However, Carlin teaches the market research being done with the scene of an interior room...wall floor ceiling surface.(C. 8 l. 60-63) and the products being test product designs(C. 18 l. 36). One of ordinary skill in the art of Market research and sales would have found it obvious to try the interior design and architect professionals with research/sales system of

Thomas/Froseth since there are a fine number of identified, predictable potential solutions (types of surveys) to the recognized need (customer satisfaction) and one of ordinary skill in the art could have pursued the known potential solutions with reasonable expectation of success.

**14. Thomas/Froseth fail to teach the limitation of the professional being able to order a sample.**

Carlin teaches allowing the designer to request/order real physical samples to help promote the sale.(C. 13 l. 45-49). One of ordinary skill in the art of Market research and sales would have found it obvious to try the interior design and architect professionals with research/sales system of

Thomas/Froseth since there are a fine number of identified, predictable potential solutions(sample acquisition) to the recognized need (customer satisfaction) and one of ordinary skill in the art could have pursued the known potential solutions with reasonable expectation of success.

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15. The examiner notes as to applicants various limitations of “wherein....” And they state that the manufacturer will use the feedback data to promote the designs and permit the manufacturer to concentrate marketing efforts on those designs, these limitations are intended used and do not hold any patentable weight. Whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited *g Minton v. Nat'l Ass'n of Securities Dealers, Inc.*, 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)

16. As to claim 15 Thomas teaches a system comprising a computer interactive communications for ballot style rating (Pg 1 ¶ 10-11) Thomas survey format allows several forms i.e., true/false, good better best, (Pg. 5 ¶ 59). A *plurality of selected responses*. Thomas teaches electronically receiving at least a portion of the likelihood of use. (Pg. 4 ¶ 53)

17. Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order wherein at least a portion of said web documents further include links from the web documents as initially communicated to associates to an interactive electronic shopping cart accessible by said associates for ordering physical samples and/or products incorporating designs as displayed on the web documents, such that the shopping cart is accessible directly from said web documents independent of selecting any given response menu item; Thomas fails to teach a shopping cart accessible from the initial communication that allows the user to place and order without taking a survey. Froseth teaches a customer taking both a food preference survey (if they



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18. **Thomas/Froseth fail to teach the product being surveyed researched as surface covering, wall covering or floor covering designs before they are release for sale.** However, Carlin teaches the market research being done with the scene of an interior room...wall floor ceiling surface.(C. 8 I. 60-63) and the products being test product designs(C. 18 I. 36). One of ordinary skill in the art of Market research and sales would have found it obvious to try the interior design and architect professionals with research/sales system of Thomas/Froseth since there are a fine number of identified, predictable potential solutions (types of surveys) to the recognized need (customer satisfaction) and

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one of ordinary skill in the art could have pursued the known potential solutions with reasonable expectation of success.

19. **Thomas/Froseth fail to teach the limitation of the professional being able to order a sample.** Carlin teaches allowing the designer to request/order real physical samples to help promote the sale.(C. 13 l. 45-49). One of ordinary skill in the art of Market research and sales would have found it obvious to try the interior design and architect professionals with research/sales system of Thomas/Froseth since there are a fine number of identified, predictable potential solutions(sample acquisition) to the recognized need (customer satisfaction) and one of ordinary skill in the art could have pursued the known potential solutions with reasonable expectation of success.

20. *As for the limitations of the functions of the **system/apparatus** or what the **system/apparatus** does, “these carry no patentable weight in a system/apparatus claim. System/Apparatus claims should cover what a device is or structures or structural elements, not what a device does. See Hewlett-Packard Co. vs. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).*

21. As to claim 16 Thomas teaches a method of tabulating and storing responses.(Pg. 3 ¶37).

22. As to claims 18-19 and 24 Thomas teaches an email notification of an available survey to participants.(Pg. 5 ¶ 0062).

23. As to claims 20-21 and 25-26 Thomas teaches printable web documents with embedded code(Pg. 1 ¶ 7).

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***Response to Arguments***

24. Applicant's arguments with respect to claim 15, 16, 18-22 and 25-27 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Traci L Casler/  
Examiner, Art Unit 3629

/John G. Weiss/  
Supervisory Patent Examiner, Art Unit 3629